

1 **3**
2 LEONARD K. WELSH, CSB NO. 097954
3 KATHILEE WELSH, CSB NO. 317166
4 LAW OFFICES OF LEONARD K. WELSH
5 1800 30th Street, Fourth Floor
6 Bakersfield, California 93301
7 Telephone: (661) 328-5328
8 Email: lwelsh@lkwelshlaw.com
9 Attorneys for Debtor-in-Possession

7 **UNITED STATES BANKRUPTCY COURT**

8 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

9 In re:

10 FREON LOGISTICS, INC.

11 Debtor-in-Possession.

Case No. 22-11907-B-11

Chapter 11

DC No. GRI-1

Date: December 20, 2022

Time: 10:45 am.

Place: Bankruptcy Court Department A
United States Courthouse
2500 Tulare Street, Fifth Floor
Fresno, CA

Judge: Honorable Rene Lastreto, II

16 **DEBTOR'S OPPOSITION TO FRUITVALE FINANCIAL LLC'S MOTION**
17 **FOR RELIEF FROM AUTOMATIC STAY REGARDING REAL**
18 **PROPERTY COLLATERAL**

19 Freon Logistics, Inc. ("Debtor") submits the following Opposition to Fruitvale Financial
20 LLC's Motion for Relief from Automatic Stay Regarding Real Property Collateral ("the
21 Opposition") and represents as follows:

22 1. Debtor owns and operates a transportation business. Debtor operates its
23 business throughout the United States and Debtor's principal business is located in Bakersfield,
24 California. Debtor's business generated gross income of \$60,190,580.44 and had costs of
25 goods sold of \$43,268,565.51 and other expenses of \$15,938,171.16 from January 1, 2022
26 through June 30, 2022. Debtor's gross revenue decreased because of the (a) increase in fuel
27 prices and costs of goods and (b) decrease in freight volume. These reasons made it impossible
28

1 for Debtor to pay all of its debt as the debt became due. Debtor is confident its gross revenue
2 will increase in the future and permit Debtor to repay the debt owed to creditors through
3 confirmation of a Plan of Reorganization.

4
5 2. Fruitvale Financial LLC ("Fruitvale") filed a Motion for Relief from Automatic
6 Stay on November 29, 2022 ("the Motion") alleging, among other things, that its collateral
7 located at 235 Mount Vernon Avenue, Bakersfield, CA ("the Bakersfield Property") (a) has no
8 equity and (b) the Bakersfield Property is not necessary for an effective reorganization.
9 However, Debtor has received an offer to purchase the Bakersfield Property for \$1,800,000.00
10 – an amount far in excess of the \$1,264,115.53 owed to Fruitvale and the "Amur Lien" of
11 \$132,656.05 described in the Motion. See Declaration of Amarinder Singh in Support of
12 Debtor's Opposition to Fruitvale Financial LLC's Motion for Relief from Automatic Stay
13 Regarding Real Property Collateral on file herein. Also, escrow on the sale of the Bakersfield
14 Property should close in about 60 days according to the offer received by Debtor. Sale of the
15 Bakersfield Property for \$1,800,000.00 should net a return of about \$400,000.00 to the estate
16 and satisfy in full Fruitvale's allowed secured claim.

17
18 3. Debtor expects to receive a formal written offer for the purchase of the
19 Bakersfield Property for \$1,800,000.00 within the next 7 to 10 days and Debtor will file a
20 Motion for Authority to Sell Real Property under 11 USC Section 363 after the formal offer is
21 received. This means that granting the Motion is premature and the granting of the Motion
22 would harm the estate and Debtor's reorganization efforts if the Motion is granted.

23
24 4. The Motion correctly cites In re Timbers, 484 US 365, 108 S.Ct. 626, 98
25 L.Ed.2d 740 (1988) as the controlling judicial authority governing this matter. But, Fruitvale is
26 careful to omit the fact that the United States Supreme Court in In re Timbers said that
27 Bankruptcy Courts should be reluctant to grant relief from the automatic stay in favor of a
28

1 secured creditor during the first four months of a Chapter 11 case when “the debtor is given the
2 exclusive right to put together a Plan” even if the secured creditor’s claim is under-secured.
3 See 108 S. Ct. at 632-3. In the present case, Fruitvale’s secured claim is not under-secured
4 based on the offer received by Debtor to purchase the Bakersfield Property for \$1,800,000.00
5 and “cause” for relief from the automatic stay does not exist at the present time as alleged by
6 Fruitvale.
7

8 WHEREFORE, Freon Logistics, Inc. (“Debtor”) prays that:

- 9 1. Fruitvale Financial LLC’s Motion for Relief from the Automatic Stay Regarding
10 Real Property (“the Motion”) be denied for the time being,
11
12 2. the hearing on the Motion be continued to February 14, 2023 to determine if the
13 Bakersfield Property can be sold for \$1,800,000.00 as indicated above, and
14
15 3. Debtor be granted such other relief as the Court deems to be just and proper.

16 Date: December 6, 2022

LAW OFFICES OF LEONARD K. WELSH

17 By: Leonard K. Welsh
18 /s/ Leonard K. Welsh
19 LEONARD K. WELSH
20 Attorneys for Debtor-in-Possession
21
22
23
24
25
26
27
28